

# AUSTRALIAN BUSINESS LAW REVIEW

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## ARTICLES

### **The Rise and Fall, and Possible Rise Again, of the Use of Infringement Notices By the Australian Securities and Investments Commission** – *Ian Ramsay and Miranda Webster*

Infringement notices issued by the Australian Securities and Investments Commission (ASIC), which specify monetary penalties to be paid by those whom ASIC believes have contravened the law, were introduced in 2004. Since then, they have been extensively used by ASIC. However, infringement notices are controversial for reasons including the significant increase in the areas of law which are subject to infringement notices, the substantial monetary penalties that are payable for some infringement notices and their use in areas of the law which are both complex and have serious offences for contraventions, leading some to argue that courts should decide the penalties rather than ASIC. The authors examine all infringement notices issued by ASIC between 2004 and 2022, documenting how the use of the notices differs substantially according to the area of law and also how the use of infringement notices has varied over time. Reasons for these findings are explored by the authors. .... 6

### **“Please Watch This Ad ... Or Else”: Could Advertisements Requiring User Focus or Response Be “Coercive” under the Australian Consumer Law?** – *Mark A Giancaspro*

From posters in shop windows and on light posts to pop-ups and banner ads on computers and smartphones, advertising has evolved dramatically over the past century. In recent times, emergent technologies have seen advertising take another quantum leap forward. Some major corporations are now employing what this article terms “compulsive advertising technologies” (CATs) to market to consumers. CATs require consumers to actively engage with the advertisement shown in order to terminate. Some ads track eye movements, read facial profiles, and even demand verbal responses to cues. This article is the first to consider whether the use of CATs could amount to “coercive” conduct, proscribed by s 50 of the *Australian Consumer Law (ACL)*, by using compulsion to negate the consumer’s choice or freedom to act in circumstances that are unreasonable or unjustifiable. Through a doctrinal analysis, it is argued that existing case law interpreting s 50 of the ACL supports this view. The article concludes by suggesting amendment to the consumer law to provide clarity as to the sorts of non-physical conduct that can amount to coercion. .... 36

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